



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 27]

नई दिल्ली, शनिवार, अगस्त 7, 1993/श्रावण 16, 1915

No. 27]

NEW DELHI, SATURDAY, AUGUST 7, 1993/SRAVANA 16, 1915

इस खण्ड में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह मूल संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उर्ध्व-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केंद्रीय अधिकारियों (संबंधित क्षेत्र प्रशासन की छोड़कर) द्वारा जारी किए गए आदेश और

Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 15 जुलाई, 1993

आ. अ. 106 :—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा पदगत पक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग पंजाब सरकार के परामर्श से, कृषि और सहकारिता विभाग, भारत सरकार, नई दिल्ली के अधीन, टेक्नोर्नॉजी मिशन इन आयल सीइड्स में श्री नरंजन सिंह भारतीय प्रशासनिक सेवा, संयुक्त सचिव को स्तरीय श्री रजिन्दर सिंह, भारतीय प्रशासनिक सेवा के स्थान पर पंजाब राज्य के लिए मुख्य निर्वाचन अधिकारी के रूप में उनके कार्यभार ग्रहण करने की तारीख से और अगले आदेशों तक, इसके द्वारा नामित करता है।

2. श्री नरंजन सिंह पंजाब सरकार के अधीन सभी पदभार या विभाग के किसी पदभारों को धारण करना समाप्त कर दें या तत्काल सौंप दें जो कि वे ऐसा पदभार ग्रहण

करने से पहले धारण कर रहे थे। किसी अपवाद की अनुमति नहीं दी जाएगी

3. पंजाब के मुख्य निर्वाचन अधिकारी के रूप में कार्य करते हुए, श्री नरंजन सिंह को यह आदेश दिया जाएगा कि उन्हें पंजाब सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे, सिवाय इसके कि उनके राज्य सचिवालय में निर्वाचन आयोग के अधीन विभाग के प्रभारी सरकार के सचिव नामित किया जाएगा जैसा कि राज्य सरकार द्वारा निर्णय लिया गया है।

4. श्री नरंजन सिंह को आयोग के पूर्व निश्चिन अनुमोदन के बिना किसी भी प्रकार का अतिरिक्त कार्यभार सौंपा या ग्रहण करवाया जाए तो वे इस आदेश के अनुसार ऐसा अतिरिक्त कार्यभार ग्रहण करने की तारीख से मुख्य निर्वाचन अधिकारी पंजाब के पदभार से अपने आप हटा दिए गए समझे जाएंगे और किन्हीं अगले आदेशों की जारी करने की आवश्यकता नहीं होगी : उनके पश्चात् मुख्य निर्वाचन

अधिकारी के रूप में उनकी इच्छा और कार्य के तथाकथित निर्वहन में उनके द्वारा की गई सभी या कोई कार्यवाई अप्राधिकृत और नास्तिक तथा शून्य होगी और उनके विरुद्ध अनुशासनात्मक कार्यवाई की जा सकती है।

[सं. 154/पंजाब/93]

अदेश से,

के. पी. जी. कूट्टी, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 15th July, 1993

O.N. 106.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Punjab hereby nominates Shri Naranjan Singh, IAS, Joint Secretary in the Technology Mission in Oil Seeds, under the Department of Agriculture & Cooperation, Government of India, New Delhi as the Chief Electoral Officer for the State of Punjab with effect from the date he takes over charge and until further orders vice Late Shri Rajinder Singh, IAS.

2. Shri Naranjan Singh shall cease to hold and hand-over forthwith the charge of all or any department under the Government of Punjab which he may be holding before such assumption of office. No exceptions will be permitted.

3. Shri Naranjan Singh while functioning as the Chief Electoral Officer, Punjab shall not be ordered to hold any additional charge whatsoever under the Government of Punjab, except that he shall be designated Secretary to the Government incharge of Department under the Election Commission in the State Secretariat as decided by the State Government.

4. If Shri Naranjan Singh is entrusted with or is made to hold any additional charge of any kind whatsoever, without the prior written approval of the Commission, he shall stand removed automatically from the office of the Chief Electoral Officer, Punjab from the date of assumption of such additional charge as per this order and no separate orders will, or need to issue. All and any action taken by him thereafter in the so called discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised and nonest and null and void and he shall render himself liable to disciplinary action.

[No. 154/PB/93]

By order,

K.P.G. KUTTY, Secy.

मई दिल्ली, 19 जुलाई, 1993

आ. अ. 107.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1991 की निर्वाचन अर्जों संख्या 14 में

इलाहाबाद उच्च न्यायालय, लखनऊ बेंच, लखनऊ के तारीख 3-6-1993 के निर्णय को एनद्द्वारा प्रकाशित करता है।
[निर्णय अंग्रेजी में प्रकाशित है।]

[सं. 82/उ. प्र.—लो. स./14/91 (लख.)]

आदेश से,

घनश्याम खोहर, सचिव

New Delhi, the 19th July, 1993

O.N. 107.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 3-6-1993, of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Election Petition No. 14 of 1991.

[No. 82-UP-HP/14/91(LKW)]
GHANSHYAM KHOHAR, Secy.
ORDER

RESERVED

Election petition No. 14 of 1991

Mitrasen

...Petitioner

vs.

Vinai Katiyar and others

...Opp. parties

Hon'ble Radhey Krishna Agrawal, J.

This election petition has been filed for setting aside the election of respondent No. 1 Sri Vinai Katiyar, hereinafter called the respondent, who was declared elected from 28-Faizabad Lok-Sabha Constituency, district Faizabad of the year 1991 and also for the relief that the petitioner be declared elected from the aforesaid Constituency.

The respondent No. 1, returned candidate, has filed CMA No. 51(E)/92 and CMA No. 63(E)/92 for dismissal of the election petition under Order 7, Rule 11 CPC and for striking out certain paragraphs in the petition. The petitioner has filed objection vide CMA Nos. 59(E)/92 and 68(E)/92. All these applications are disposed of by this judgment.

A notification under Section 14 of the Representation of People Act, 1951 (hereinafter called the Act) was issued by the Election Commission of India and had appointed Returning Officers in all the Districts of Uttar Pradesh to conduct election of Parliamentary Constituencies in 1991. 15-6-91 was fixed as the date of poll. The petitioner and the respondents 1 to 29 had filed their nomination papers for contesting election for the aforesaid Lok-Sabha seat, i.e. 28-Faizabad Lok-Sabha Constituency. The petitioner was set up by the Communist Party of India as its candidate and the respondent No. 1 was set up by Bharatiya Janta Party as its candidate and 'Kamal' (i.e. Lotus) was allotted as election symbol to respondent No. 1 Sri Vinai Katiyar. The poll took place on 15-6-1991 and after counting the respondent Vinai Katiyar was declared elected on 18-6-1991.

The petitioner challenged the said election of the respondent on the ground of corrupt practices adopted by the respondent, alleging that the Bharatiya Janata Party (BJP) had its allies Vishwa Hindu Parishad, Bajrang Dal, Shiv Sena, Durga Vahini, Karsewa Samiti and RSS. These parties had helped all these candidates set up by BJP in the election. These parties had published number of posters and pamphlets for the furtherance of the election of the respondent and created an atmosphere of hatred and enmity between Hindu and Muslim Communities in the name of religion (Ram Janam Bhumi and Babri Masjid) with each other in order to attract votes of Hindu community in favour of candidates set up by BJP. Corrupt practices on the basis of which this petition has been filed, have been innumeraled by the petitioner in paragraph 9 and onwards. It has been alleged that pamphlets Schedule 1 and 2, annexed to the petition, published by Mehra Offset Press, Agra were pasted in the said constituency with the consent of the respondent since the commencement of the election campaign till the date of declaration of the result. In Schedules names of few persons who were affected by the said atmosphere have been given. In paragraph 10 it has been mentioned that with the consent of the respondent pamphlets annexure-4 were distributed in the entire constituency indications Mulaim (which probably refers to Mulkam Singh Yadav ex-Chief Minister of the State) as symbol of Muslims and also indicating that who would vote for Mulaim would be buried in Qabristan and would be compelled to recite Alla-ho-Akbar. Schedule 5 contains the list of persons affected by this pamphlet.

In paragraph 11 it has been alleged that the petitioner, who was a candidate of Communist Party of India, was supported by National Front and Jantadal. Sri V. P. Singh, Ex-Priminister of India, who was the leader of the aforesaid two parties, was shown in pamphlet, Schedule 6, as symbol of Kumbha-Karan who could be killed by Virat Hindu Samaj. The said pamphlet was pasted in the constituency at several places since the commencement of the election campaign till declaration of the result. Schedule 7 contains the names as few persons who were influenced by the said poster.

According to paragraph 12 the respondent had exhibited his photographs along with symbol of BJP and the word 'Om' (a religious symbol) in the entire constituency in order to arouse the sentiments of Hindus to vote for BJP. The said photograph is Schedule 8. Schedule 9 is the list of few voters who were influenced by the said photographs.

In paragraph 13 it has been alleged that photos schedule 10 were pasted in the constituency indicating Lord 'Ganesh' holding the symbol 'Kamal' allotted to BJP candidate. Schedule 11 contains names of few persons who were influenced by the said photograph.

Paragraph 14 of the petition contains the allegation that photographs of Sri L. K. Advani, Leader of BJP and that of the respondent along with photographs of few Hindus who had died on 2nd Nov.,

1990 at Ayodhya, were pasted in the entire constituency in order to arouse the feeling of Hindus in favour of the respondent. Schedule 12 is the said photographs and Schedule 13 contains the names of few persons who were influenced by the said picture.

In paragraph 15 it has been stated that on the persuasion of the respondent, who was the President of Bajrangdal, few respected saints of Ayodhya had issued an appeal to Hindu Voters in the name of religion to cast votes in favour of the respondent. The said appeal schedule 14 was pasted in the constituency with the consent of respondent and Schedule 15 contains the names of few persons who were influenced by the said appeal.

According to allegations made in paragraph 16 the respondent, his workers and agent had pasted the posters, schedule 16, containing appeals from Vishwa Hindu Parishad, Bajrangdal and Durga Vahini with slogan 'Jai Sri Ram' through out the constituency. The poster was published with the consent of the respondent No. 1. Names of those persons, who were influenced by the said poster, have been given in Schedule 17.

In paragraph 17 of the petition it has been alleged that banner Schedule 17 indicating the slogan "KAR SEVKON KA BALIDAN MANG RAHA HAI KAMAL NISHAN" were pasted and hung at various places of Rudali, Faizabad, Milakpur and Sohawal Assembly Constituencies. The said banner created hatred towards the petitioner.

According to paragraph 18 of the petition a appeal in the name of religion, schedule 18, issued by Sri L. K. Advani, Ex-President of BJP in the daily newspaper Swatantra Bharat dated 3-5-91 amounted to corrupt practice on the part of the respondent. Schedule 19 contains the list of persons who were influenced by the said appeal.

In paragraph 19A it is alleged that Sri Shanta Kumar, the Chief Minister of Himanchal Pradesh and leader of BJP had delivered speech on 21-5-91 on the Ramlila ground, Chauk, Faizabad. The said speech was tape recorded and its script is annexed as schedule 20. It has also been alleged that the said speech was tape-recorded by BJP workers and the same was heard by the voters of the said Constituency. By the said speech voters of the Constituency were affected, schedule 21 contains name of such few voters.

In paragraph 19B it has been mentioned that Sri Ashok Singhal, the President of Vishwa Hindu Parishad had delivered a speech on 26-5-91 at Gulab Bari. The said speech was tape recorded by the petitioner's workers as well as by the workers of BJP at the instance of the respondent and the said speech was used by the workers of the respondent with his consent at several places in the constituency from 1-6-91 to 13-6-91. The details of tape-recorded, speech of Sri Singhal has been annexed as schedule 22. Names of few persons influenced by the said speech are contained in schedule 23.

In paragraph 19C of the petition it has been alleged that Sri Atal Behari Bajpai, a prominent leader of BJP had delivered speech at Kshatrya Boarding House on 12-5-91 in the presence of the respondent. Tape-recorded speech of Sri Bajpai has been annexed as Schedule 24. It is further alleged that the said speech aroused immotional feelings of Hindus to cast their votes in favour of respondent No. 1. Schedule 25 contains the name of few persons who were attracted by the said speech.

In paragraph 19D it has been alleged that the tape-recorded speech (Schedule 26) of Sadhvi Ritumbhara was played by the agents of the respondent at different places of the Constituency with the intention to create communal hatred between Hindus and Muslims so that Hindus may cast their votes in favour of the respondent. Schedule 27 contains the name of few persons who were attracted by the said tape recorded speech.

On the aforesaid allegations it has been alleged that the said acts of the respondent would amount to corrupt practice.

Respondent No. 1 alone contested the petition. The other respondents did not put their appearance. The respondent has filed an application under order 6 Rule 16 and Order 7 Rule 11 Code of Civil Procedure for dismissal of the election petition and for striking of the paragraph 1 to 19 of the petition. In the said application it has been mentioned that the allegations made in the petition were fake, misconceived, indefinite, vague and wrong. Those allegations do not at all make out any case of corrupt practice or for any cause of action. Material facts were not at all disclosed regarding the corrupt practice. Date, time and place of the alleged corrupt practices have not been given nor it has been indicated as to how the respondent was in any way associated with the same. The appeal issued by L.K. Advani could not be said to have the affect of creating hatred or enmity between Hindus and Muslims. It is also alleged that full particulars of the respondents have not been given in the petition. The petitioner has not impleaded Sri Shanta Kumar, Sri Ashok Singhal, Sri Atal Behari Bajpai and Sadhvi Ritumbhara as respondent and on that account the petition must be dismissed. It is also alleged that Sri Ram Subha Varma who has been shown as respondent No. 23 had not contested the election and that the particulars of respondent No. 29 have not been given in accordance with the nomination papers.

The petitioner has replied to the said applications of the respondent for dismissing the election petition. It has been alleged that the full and relevant particulars of the corrupt practices have been mentioned in the petition. Date, time and place of commission of such corrupt practices and the parties who have committed such practices have been indicated in the petition and schedules annexed thereto. Allegations made in the petition amount to corrupt practices and on that account the result of the election has been

materially affected. It was also stated that at this stage appraisal of evidence and the existence of any particular fact would not be looked into. This would be matter of evidence which would be looked into during trial.

The first point argued on behalf of the respondent was that since the petitioner has not impleaded Sri Shanta Kumar, Sri Ashok Singhal, Sri Atal Behari Bajpai and Sadhvi Ritumbhara in the petition the petition must be dismissed for their non-impleadment. This contention has no force.

Section 82 of the Act deals with the parties which are to be made in the petition. It reads as follows :

“A petitioner shall join as respondents to his petitioners :

- (a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

In this case the petitioner has claimed for setting aside the election of the respondent No. 1 (the returned candidate) as being void and has further claimed the relief that he (the petitioner) may also be declared as duly elected candidate from 28-Lok-Sabha Constituency, district Faizabad. In view of the reliefs claimed by the petitioner, therefore, the petitioner was required to implead all the contesting candidates in the petition. It is not in dispute that respondent No. 1 is a returned candidate and respondent No. 2 to 29 were the contesting candidates. These all the contesting candidates have been impleaded in the petition.

The learned counsel for the respondent has however, places reliance on clause (b) of section 82 of the Act and contended that any other candidate against whom allegations of any corrupt practice has been made should also be impleaded as party in the petition and in the context his future argument further in that since allegations in the petition have been made against M/s Shanta Kumar, Ashok Singhal, Atal Behari Bajpai and Sadhvi Ritumbhara and for having committed corrupt practice they should have also been impleaded as party in the petition. In this context we have to see how the word “candidate” has been defined in the Act. Section 79 (b) of the Act defines “candidate” as follows:

“Candidate means a person who has been, or claims to have been duly nominated as a candidate at any election.”

Section 32 of the Act deals with a granting the nomination of candidates for election. It reads as follows:

"Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provision of the Constitution and this Act or under the provisions of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be."

Section 79(b) and section 32 read together would go to indicate that only that person would be called a candidate who had been nominated as a candidate for election. It has not been disputed that the aforesaid persons, viz., M/s. Shanta Kumar, Ashok Singhal, Atal Behari Bajpai and Sadhvi Ritumbhara were not nominated as candidates for election to fill the seat of 28 Lok-Sabha Constituency. They cannot, therefore, be called a candidate referred to in section 82 (b) of the Act. In my opinion therefore, the petition cannot be termed as defective for non-joinder of these persons.

Ram Sukh Varma respondent No. 23 was also one of the candidates nominated as a candidate in the aforesaid constituency. In the petition his name has been mentioned as Ram Sukh Varma. It has therefore, been argued on behalf of the respondent that since correct name of the candidate has not been mentioned in the petition the petition must be dismissed on that ground alone. This contention is devoid of substance. It is not in dispute that Ram Sukh Varma was the candidate and not Ram Subh Varma. There appears to be a typing mistake in this regard and instead of letter "K" letter "b" has been typed in the petition. On account of this typing mistake the petition cannot at all be dismissed.

This petition has been filed for declaring the election void for practising corrupt practice as mentioned in sections 123(3) and (3A) on the part of respondent and his election agents and for declaring him as the elected candidate from the said Constituency under section 98. Section 100 provides grounds for declaring election void. Section 101 mentions ground for which a candidate other than the returned candidate may be declared to have been elected. Section 123 States as to what would be deemed to be corrupt practices. Section 86 deals with the trial or the petition. These sections, so far as there are relevant for the case read as follows:

"Section 86-Trial of elections.—(1) The High Court shall dismiss an elected petition which does not comply with the provisions of section 81 or section 82 or sec. 117.

2.....

3.....

4.....

5. The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the par-

culars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

6.

7.

Section 100-Grounds of declaration election to be void.—"1. Subject to the provisions of sub-section (2) if (the High Court) is of opinion.—

(a)

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c)

(d)

the High Court shall declare the election of the returned candidate to be void."

2.

"Sec. 101. Grounds for which a candidate other than the returned candidate may be declared to have been elected—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion.—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; of

(b) that but the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have have been duly elected."

Sec. 123 Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) Bribery.

(2) Undue influence.

(3) The appeal by a candidate or his agent or any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, com-

munity or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate;

Provided that no symbol allotted under this Act to a candidate shall be deemed to be religious symbol or a national symbol for the purposes of this clause.

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election at any candidate".

"83-Contents of petition-(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof".

According to section 83, therefore, the election petition must contain concise statement of the material facts on which the petitioner relies and in case the petition has been filed for corrupt practice alleged by the respondent it must set forth full particulars of the alleged corrupt practice along with full statement of the name of parties alleged to have committed such corrupt practice as well as the date and place of the commission of each such practice.

Relying on the provisions contained in sec. 83 of the Act the learned counsel for the respondent has contended that the allegations made in the petition does not fulfil the requirements of sections 83 of the Act and therefore, the petition should be rejected, under Order 7 Rule 11 CPC, as it does not disclose any cause of action. The controversy as to what exactly are the averments necessary under section 83

of the Act was raised before the Hon'ble Supreme Court in various cases. In a case reported in 1969 S.C. page 1201 S.N. Balakrishna v. Fernandez the Hon'ble Supreme Court has observed :

"The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that statement of fact (which must be set on was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words "material facts" will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be co-related to one of the heads of the corrupt practice. Just as a plaintiff without disclosing a proper cause of action, cannot be said to be a good plaintiff, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information." "..... The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of section 86 although the penalty of dismissal is taken away.".

"The power of amendment is given in respect of particulars but there is a prohibition against an amendment which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. One alleges the complaint in the material facts and they must show a complete cause of action. If a petitioner has

committed to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. The argument that the later part of the fifth sub-section is directory only, cannot stand in view of the contrast in the language of the two parts. The first part is enabling and second part creates a positive bar. Therefore, if a corrupt practice is not alleged, the particulars cannot be supplied. There is, however, a difference of approach between the several corrupt practices. If for example the charge of bribery of voters and the particulars give a few instances, other instances can be added : if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice-versa. In the scheme of election law they are separate corrupt practices which cannot be said to grace out of the material facts related to another person. Publication of false statement by an agent is one cause of action, publication of false statement by the candidate is quite a different cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different cause of action".

From the aforesaid observations it is clear that the statement of material fact has been equated with the facts which constitute cause of action and on proof of the said facts the petitioner would be entitled to get the relief.

In *Raj Narain vs. Smt. Indira Nehru Gandhi* (1972 SCC, 1302) the Hon'ble Supreme Court has observed :

"... Dealing with the Scope of Ss. 83 and 86(5) this Court observed that S. 83 requires that the petition must contain a concise statement of the material facts on which the petitioner relies and the fullest possible particulars of the corrupt practice alleged. 'Material facts' and 'particulars' may overlap but the word 'material' shows that the ground of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present as full a picture of the cause of action as to make the opposite party understand the case he will have to meet".

In *Roop Lal Sathi v. Nachhattar Singh Gill* (1982 (3) SCC, 487) the Hon'ble Supreme Court has observed that :

"the word 'material' in material facts under Section 83 of the Act means facts necessary for the purpose of formulating a complete cause of action; and if any one 'material' fact is

omitted, the statement or plaint is bad; it is liable to be struck out".

In AIR 1972 page 515 *Hardwari Lal v. Kanwal Singh* it has been observed :

"It is, therefore, vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges".

In AIR 1973 S.C. page 2158 *Manphul Singh v. Surinder Singh* the Hon'ble Supreme Court has observed :

"It has been held by this Court that charges of corrupt practices under Section 123 of the Representation of the People Act, 1951 are quasi-criminal in nature and should, therefore, be proved satisfactorily as it has a double consequence, the election of the returned candidate being set aside and the candidate incurring a subsequent disqualification as well".

(See also AIR 1975 S.C. 290 *Kahimkhan vs. Khursid Ahmad*)

In *Manu Bhai Lal Amersey V. Popat Lal Mani Lal Joshi* AIR 1969 SC 734 the Hon'ble Supreme Court observed that where a corrupt practice is charged against the returned candidate the petition must set forth full particulars of the corrupt practice so as to give the charge a definite character and enable the court to understand what the charge is.

In another case reported in AIR 1976 page 744 *Udhav Singh Vs. Madho Rao Sindhia*, the Hon'ble Supreme Court has considered the question regarding the disclosure of relevant facts and material particulars in the election petition. It has been observed :

"All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are 'material facts'. In the context of a charge of corrupt practice 'material facts' would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action are 'material facts' which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of Sec. 83 (1) (a).

"Particulars" on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, define and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative".

In another case reported in AIR 1987 SC page 1577 *Dhartipakar v. Rajiv Gandhi* the Hon'ble Supreme Court has observed :

"Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right, instead it is a statutory right regulated by the statutory provisions of the Representation of the People Act, 1951. There is no fundamental or common lawright in these matters".

It has further been observed :

"Section 83 lays down a mandatory provision in providing that an election petition shall contain concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by S. 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under S. 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner".

The learned counsel for the parties have cited several other authorities on the same point however, it would be unnecessary to burden the judgment by quoting the observations made by the Hon'ble Supreme Court in this regard. This much is, however, now clear that the election petition must contain all the material facts in clear terms, the allegations should not be general and vague. On the basis of allegations made in the petition it must be clearly borne out that the petitioner has a cause of action for filing the petition. Keeping in view the aforesaid pronouncement made by the Hon'ble Supreme Court drawing distinction between 'material facts' and 'particulars' the court would now proceed to examine if

the allegations made in the petition for showing the corrupt practices do disclose material facts for giving cause of action to the petitioner. It may be mentioned here that there can be no quarrel to the proposition that if all the material facts have been narrated in the petition in order to disclose the cause of action to the petitioner and for that very material fact on every particular point any better particulars are needed by the Court, the Court can direct the petitioner to amend or amplify the material facts which have been disclosed in the petition.

This petition has been filed alleging corrupt practices as mentioned in section 123 (3) and (3A) of the Act. All the necessary particulars or statement of facts and ingredients would be required in the petition in order to base a petition on the allegations of corrupt practices. The Hon'ble Supreme Court has laid down the guidelines in AIR 1984 SC page 621 In *Daulat Ram v. Anand Sharma*. The Hon'ble Supreme Court has held :

"We must remember that in order to constitute corrupt practice, which entails not only the dismissal of the election petition but also, other serious consequences like disbarring the candidate concerned from contesting a future election for a period of six year, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings :

- (1) Direct and detailed nature of corrupt practice as defined in the Act.
 - (2) Details of every important particular must be stated, giving the time place, names of persons, use of words and expressions etc.
 - (3) It must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent.
19. A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate, or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. In fine the allegation must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or qualm.
20. As logical consequence of the principles enunciated by us, it follows that where the

allegation of fraudulent practices is open to two equal possible inferences the pleadings of corrupt practice must fail. For instance, A. or in this case Sood or Batish joined or participated or was present in an election rally or crowd and must have shouted slogans on his own without taking the consent of the candidate concerned, this would not be a corrupt practice within the meaning of S. 123(2) because the element of consent is wholly wanting”.

In Azhar Husain's case A.I.R. 1986 S.C. 1252 one of the allegations regarding corrupt practice was that Sri M. H. Beg, the then Chief Justice of India, and a close friend of Nehru family, had appeared on the Government controlled news media and had made a speech praising the respondent and comparing his entry into politics as the birth of new Arjun and the said speech of Sri Beg was heard on Television by thousands and thousands of voters. It was also alleged that the services of Sri Beg for this purpose was obtained by respondent, his agents and other persons with the consent of the respondent. It was also alleged that the propaganda about Mr. Beg speech was done particularly amongst the members of Muslim community and as such the said act constituted a gross corrupt practice under the Election Law. The said plea was examined by the Hon'ble Supreme Court and it was observed :

“The averments made in the petition do not show (i) who had obtained or procured the assistance from Sri Beg and (ii) how he had obtained or procured the assistance of Sri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action.”

In the said Azhar Husain's case it was alleged that throughout the petitioner's constituency in Amethi, workers employed by the respondent and his agents painted at available places the two slogans. The first was “BETI HAI SARDAR KI DESH KE GADDAR KI”. The second slogan was : MENKA TERA YAH ABHIMAN BANNE NA DEGA KHALISTHAN”. The said slogans were also painted on some of the vehicles used by the respondent's workers and the same was used with the consent of the respondent and as such as the corrupt practice. Repelling the said argument Hon'ble Supreme Court has observed :

“There is a glaring omission to mention the names of the workers said to have been employed by the respondent or his agents who have allegedly painted the slogans. So also no material particulars are given as regards the vehicles on which the said slogans have been said to have been painted.

There are no material particulars or facts.”

Regarding one other corrupt practice in that very case the Hon'ble Supreme Court has observed :

“On a scrutiny of the averments made in the election petition it is evident that it is not pleaded as to who has distributed the pamphlets, when they were distributed, where they were distributed and to whom they were distributed, in whose presence they were distributed etc. etc. Pleading is ominously silent on these aspects. It has not even been pleaded that any particular person, with the consent of the respondent or his election agent, distributed the said pamphlets.”

Regarding another corrupt practice pertaining to the distribution of pamphlets containing allegations against Menka Gandhi the Hon'ble Supreme Court observed :

“In view of the doctrine laid down in Nihal Singh's case (1970)(3) SCC 239 (Supra) as early as in 1970, the High Court was perfectly justified in taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, the pleading would not disclose a cause of action. There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in Nihal Singh's case (supra).”

In *Jagram Singh v. Pritam Singh* 1992 ALJ 502 there was allegation regarding the booth capturing by workers, supporters and Agents of the returned candidate. This court has observed :

“It is not stated as to who took whose consent either of the respondent No. 1 or his election agent. An omnibus averment was made in the schedule that booth capturing was done by the persons named in column 6 of the schedule 1, with the consent of the returned candidate and of his election agent. It is, therefore, clear that paragraph 9 of the petition does not disclose the material facts and particulars of the charge of booth capturing as required by section 83 (1)(a) and (b).”

After having stated the settled legal position in regard to the contents of the expression “material facts” and also the requirements for stating material facts in respect to the allegations made regarding corrupt practices we would now proceed to examine the grounds on which the present petition has been filed assailing the election of the respondent. Before doing so, I would like to dispose of the preliminary objections raised by the counsel for the petitioner. It has been contended on behalf of the petitioner that the power to reject the election petition summarily should not be exercised at this stage and this question can be gone into at the time of the trial.

Similar argument was advanced before the Hon'ble Supreme Court in a case reported in 1986 S.C. page 1253 *Azhar Husain versus Rajiv Gandhi*. Repelling the said argument the Hon'ble Supreme Court has observed :

"The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action."

"The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments."

"To wind up the dialogue to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The Court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled."

There is, therefore, no force in the argument of the learned counsel for the petitioner that the question as to whether the petition discharges and cause of action or as to whether the requirement of sections 81, 82 or 83 of the Act have been fulfilled or not, should be looked into at the time of trial and not at the preliminary stage.

We now proceed to examine the allegations regarding corrupt practices alleged in the petition. In paragraph 9 of the petition it has been alleged that the BJP has its allies Vishwa Hindu Parishad, Bajrangdal, Karsewa Samiti and RSS (Rashtriya Swayam Sewak

Sangh) are helped in all respects to the candidates set up by the BJP. This is a very vague and general allegation. Nothing has been mentioned as to on what basis the petitioner had alleged that BJP has the support of the aforesaid organisations. The petitioner has in fact left the respondent and the court to guess the basis for such allegations. On the basis of this vague allegation the court cannot give any finding that BJP has the support of those organisations. The petitioner should have disclosed the material facts regarding the said allegation. In the same paragraph it has been mentioned that the Vishwa Hindu Parishad had distributed pamphlets schedule 1 and 2 which exhibited that the Hindus must vote to BJP candidate. The said schedule 1 and 2 do not at all indicate that there was any appeal that the Hindus must vote to BJP candidate. Further it was mentioned in the said paragraph that the said posters were pasted in the Constituency with the consent of respondent No. 1. Names of the workers who had pasted the said posters and also particular places where the posters were pasted were not indicated. In *Azhar Husain's* case (supra) the allegation was that certain objectionable slogans were painted in the constituency the Hon'ble Supreme Court has observed : (as quoted earlier also)

"There is a glaring omission to mention the names of the workers said to have been employed by the respondent or his agents who have allegedly painted the slogans. So also no material particulars are given as regards the vehicles on which the said slogans have been said to have been painted."

It has also been observed :

"Apart from that the most important aspect of the matter is that in the absence of the names of the respondent's workers or material facts spelling out the knowledge and consent of the respondent or his election agent, the cause of action would be incomplete."

In paragraph 10 of the petition it has been mentioned that "Mulaim" (probably Sri Mulaim Singh Yadav, ex-Chief Minister) was depicted as the symbol of Muslim opposite to Hindus and pamphlet schedule 4 to that effect was pasted in the entire Constituency. In this regard no date at all was mentioned for pasting the said pamphlet in the Constituency. There is also no allegation that the said pamphlet was pasted with the consent of the respondent. According to the averment in this paragraph it appears that the petitioner merely wanted to allege that the contents of the said pamphlet were written with the consent of the respondent. Further the names of the workers, who had pasted the said pamphlet has not been disclosed. It is also relevant to observe that the said alleged pamphlet does not indicate as to on whose instance the same was issued. It also does not disclose that the same was for the furtherance of the prospects of the electing of the respondent or was affecting the election of any candidate prejudicially.

It would be relevant to quote the language of the said pamphlet, in order to appreciate the above observation made in this regard :

"MULAIM KO JITWANA HAI, ALLA, AKBAR GANA HAI. APNE GHAR KE MURDON KO KABRISTAN LE JANA HAI. RAM NAM SATYA HAI GOPAL NAM SATYA HAI ISKO BHUL JAIYE, ALLAH AKBAR JAPIYE, MULAIM KO VOTE DO, MULAIM NAM SATYA HAI".

In my opinion, therefore, this ground of attack also does not disclose any cause of action in favour of the petitioner.

In paragraph 11 it has been mentioned that the petitioner was a candidate for CPI and he was supported by National Front and Janta Dal leader Sri V. P. Singh, ex-Prime Minister of India and that in the pamphlet annexure-6 Sri V. P. Singh was depicted as KUMBH KARAN for supporting the cause of Muslims and he could be killed by Virat Hindu Samaj. The said pamphlet was said to have been issued by Vishwa Hindu Parishad. There is no averment in the said pamphlet that Hindus should vote for the respondent and should not vote for the petitioner, who is also a Hindu. Further as observed above names of the workers and names of any particular place were not indicated in this paragraph, leaving wide scope for the petitioner to create and manufacture evidence at the time of trial. Similar is the position regarding the alleged consent of the respondent in this regard. In this connection reference may be made to the observation of the Hon'ble Supreme Court in Azhar Husain's case (supra). In that case there was an allegation that a book containing objectionable material was distributed with the consent of the respondent (returned candidate). The Hon'ble Supreme Court in that connection made the observation :

"Even so, strangely enough even a bare or bald averment is not made as to :

- (i) whom the returned candidate gave consent;
- (ii) in what manner and how; and
- (iii) when and in whose presence the consent was given to distribute these books in the constituency. Nor does it contain any material particulars as to in which locality it was distributed or to whom it was distributed, or on what date it was distributed. Nor are any facts mentioned which taken at their face value would show that there was consent on the part of the returned candidate. Under the circumstances it is difficult to comprehend how exception can be taken to the view taken by the High Court".

The aforesaid pamphlets schedule 1, schedule 2, schedule 4 and schedule 6 mentioned in paragraphs 9, 10 and 11 of the petition might have been issued by the Vishwa Hindu Parishad. But no close or direct nexus has been alleged between the respondent

and Vishwa Hindu Parishad and therefore, if on account of sympathy that individual or organization supporting the candidature of a particular candidate issues any appeal that would not be a ground to hold that the candidate had given his consent for the act of that individual or organizations (as has been observed in Daulat Ram's case) (Supra).

In paragraph 12 of the petition it has been mentioned that the photograph of the respondent coupled with the word 'OM' (in Hindi) was depicted and the same was exhibited in the entire constituency, in order to arouse the sentiments of Hindus to vote for BJP. It has been argued on behalf of the petitioner that the word 'OM' is a religious symbol and therefore, indicating the said symbol 'OM' in the photograph of the respondent would go to show that the appeal was made on the ground of religion. It has not been indicated as to how the word 'OM' was treated to be a religious symbol. No source of this assumption or inference has been disclosed. It would be relevant to observe that Hindus before starting new work or even writing letters use the word 'OM' "SRI RAM", "SRI GANESHAINAMAH", "JAI MATA DI" or put mark "ॐ" etc. as they believe that these words would bring them success in their mission. Similarly Jains use the phrase "JAI JINENDRA" and Muslims use the phrase "786". These words are considered to be auspicious and can by no stretch of imagination be called religious symbols. Use of these phrases do not at all convey any appeal on the basis of any religion, rather these phrases reflect the personal faith of the writer. Apart from this there is no allegation that the said photographs were exhibited at the instance or with the consent of the respondent. The mere fact that in schedule 8 the photograph of the respondent was displayed would not lead to the inference that the said photographs were exhibited or distributed with the consent of the respondent. It has also not been indicated as to when and on which particular place the said photographs were exhibited. It has also not been indicated as to by whom, where and to whom those were exhibited. For want of these material facts it can be said that the petition does not disclose cause of action for this allegation.

Allegations made in paragraph 13 are to the effect that the photograph of Lord "GANESH" holding in his hand lotus (KAMAL) were pasted in the constituency. There is no averment that the said photograph was pasted with the consent of the respondent or his election agent. There is also no indication as to when and at which particular places these photographs were pasted. This paragraph also does not indicate that the same was used for the furtherance of the prospects of the election of the respondent or for prejudicially affecting the election of any other candidate. Apart from this the photograph of Lord Ganesh holding lotus would not amount to corrupt practice. Further this photograph does not at all indicate that the voters should cast their votes in favour of any particular candidate or party. The learned counsel for the petitioner, however, contended that a perusal of the photograph schedule 10 would lead to an inference that the persons exhibiting the said photo-

graph wanted to convey through Lord Ganesh that voters should cast their votes in favour of lotus. I am of the view that no such inference can be drawn as suggested by the learned counsel for the petitioner. As has already been quoted above the Hon'ble Supreme Court in Daulat Ram's case (supra) has observed that the allegation of corrupt practice could not be left to time, chance or conjecture for the court to draw an inference by adopting an involve process of reasoning. It is also relevant to observe that there is no allegation in the petition that the person, at whose instance the said photograph was exhibited, had any close or direct nexus with the respondent. On the basis of such bald allegation as made in paragraph 13 of the petition it cannot be said that the petitioner has any cause of action on that ground.

Paragraph 14 of the petition makes allegation that photographs of certain Hindus, who died on 2nd Nov. 1990 at Ayodhya were exhibited along with the photograph of Sri L. K. Advani President of the BJP and that of the respondent. It is alleged that these photographs were pasted in the entire constituency to arouse the feelings of Hindus to cast their votes in favour of the respondent. The material facts for this alleged corrupt practice have not at all been disclosed. It has not been mentioned that the said photographs were pasted or displayed at the instance of the respondent or by his election agent or even with the consent of the respondent. It is also not mentioned as to who had pasted and exhibited the said photographs. There is also no allegation as to when and during what period the said photographs were pasted or exhibited. Names of the persons who had pasted the said photographs have also not been disclosed. Similar point had come for consideration before the Hon'ble Supreme Court in the Azhar Husain's case (supra). In that case, as has already been quoted above, the Hon'ble Supreme Court has indicated that in the absence of the names of the respondent's workers or material facts spelling out the knowledge and consent of the respondent or his election agent the cause of action would be incomplete. Apart from this exhibiting the photographs of those Hindus (who had died at Ayodhya on 2-11-90) along with the photograph of Sri L. K. Advani and the respondent would not, on the basis of allegation made in the petition, amount to corrupt practice as mentioned in Section 123(3) or 123(3A) of the Act. The photograph schedule 12 annexed with the petition also does not at all indicate that any appeal was made on the ground of religion, race, caste and community etc. After considering the entire material I would hold that the pleadings in this paragraph suffers from lack of material facts and does not disclosed any cause of action.

In paragraph 15 it has been alleged that at the instance of the respondent certain respected saints of Ayodhya had issued an appeal schedule 14 in favour of the respondent so that Hindus may cast their votes in favour of the respondent. The said appeal was in the name of religion as the said appeal contained the photo of Lord Sri Rama and the symbol of KAMAL (symbol of BJP). Regarding this corrupt practice also it may be mentioned that nothing has been indicated

in the petition to indicate as to when and during which period this appeal was distributed. Names of the workers who had pasted the said appeal have also not been disclosed. In the Azhar Husain's case (Supra) in a similar matter the Hon'ble Supreme Court has observed :

"38. In view of the doctrine laid down in Nihal Singh's case (1970(3) SCC 239) (supra) as early as in 1970, the High Court was perfectly justified in taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, the pleading would not disclose a cause of action. There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in Nihal Singh's case (supra). The learned counsel for the appellant is unable to show how the Court has committed any error in reaching this conclusion."

The observation made by the Hon'ble Supreme Court quoted above fully apply with the facts of the present case regarding this alleged corrupt practice. I would, therefore, hold that the pleading is vague and lacks material facts.

Paragraph 16 of the petition is regarding pasting of posters in the constituency containing appeal from Vishwa Hindu Parishad, Durga Vahini and Bajrangdal containing slogan of 'Jai Sri Rama' and those who work for Hindu benefit would govern the country (Jo Hindu hit ki bat karega wahi desh par raj karega). There is no averment as to when and during which period this poster was pasted. The observation made by the Hon'ble Supreme Court quoted above in Azhar Husain's case (supra) would be fully applicable as regarding this alleged corrupt practice. Pleading regarding this corrupt practice also is vague and lacks in material facts.

Paragraph 17 of the petition is regarding a banner alleged to be issued by BJP indicating the slogan "Kar sewak ka balidaan mang raha hai kamai nishan". The pleading in this regard is absolutely vague and make out no cause of action for this alleged corrupt practice. It has not been mentioned as to when and during which period this banner was exhibited by the respondent or his agent or by any person with the consent of the respondent or his election agent. Apart from this the averments made in the banner quoted above does not go to indicate that the appeal was made on the ground of religion, race, caste and community etc. It has been argued on behalf of the petitioner that the words "Karsewak" in fact referred to the person who had gone to Ayodhya for doing work for the construction of Ram Janma Bhumi Temple, at Ayodhya. The argument is not a substitute of pleading. In the absence of such averment in the petition, it would not be possible for the respondent to meet with the allegation. It has been also rightly argued on behalf of the respondent that even persons of Muslim community had also undertaken the work of Kar

Sewak for protecting the structure which they called Babri Masjid and therefore by mere use of word Kar Sewak in the poster would not mean at that any appeal was made on the ground of religion. In view of this I have no hesitation in coming to the conclusion that for this alleged corrupt practice also relevant material facts have not been disclosed and there exists no cause of action to the petitioner for the same.

Schedule 18 is the appeal issued by Sri L. K. Advani in the newspaper Swatantra Bharat on 3rd of May 1991. Regarding this appeal it has been alleged in paragraph 18 of the petition that since the said appeal contained the name of Lord Sri Rama it would be deemed to be an appeal on the basis of religion. A perusal of the said appeal Schedule 18 would go to indicate that the same was not at all made on the ground of religion. It would be useful to quote the relevant and prominent portion of the said appeal :

“Azadi ko tukron me nahi banta ja sakta, azadi tabhi sarthak hoti hai jabki sab usmen bhagidar hon—chahen ve garib hon ya amir ; ham se sammat hon ya na hon ; tatha unke dharm aur manyatayen kuchh bhi hon”.

In the said appeal words Ram, Roti Insaf have been indicated. Word Ram has been used for “Bhai Se Mukti” i.e. freedom from fear. Word “Roti” has been used for “Abhawon Se Mukti” and the word “Insaf” was used to denote “Bhed-bhav Se Mukti”. Use of these words “Ram Roti and Insaf” can by no stretch of imagination be called an appeal on the ground of religion, race, caste, etc. The word Ram in this appeal has not been used as a symbol of religion but has been used to convey to the people regarding freedom from fear. In my opinion, therefore, by use word “Ram” in this appeal would not at all amount to any corrupt practice. Similarly the phrase “Ram Rajya ki or Chalen BJP ke Sath Chalen” would not in the absence of any material facts amount to an appeal on the ground of religion. Phrase “Ram Rajya” conveys state of prosperity, fearlessness, freedom to all irrespective caste, creed, race, religion and community. Mahatma Gandhi has also given a call for establishing Ram Rajya in India after obtaining independence. It cannot, therefore, be said that this phrase “Ram Rajya” in any way relates to any particular religion. Pleading regarding this alleged corrupt practice is also quite vague and lack material facts and do not give any cause of action constitute corrupt practice.

Paragraph 19 relates to speeches alleged to have been given by S/Sri Shanta Kumar, Chief Minister of Himachal Pradesh, Ashok Singhal, President of Vishwa Hindu Parishad, Atal Behari Bajpai, BJP leader and Sadhvi Ritumbhara. In the petition it is alleged that the speeches delivered by the aforesaid persons were tape recorded by the workers of the petitioner respondent and those tape-recorded speeches were played and heard by the voters of the constituency and the said speeches contained the appeal to vote on religious grounds and, therefore, the same would be treated as corrupt practice as defined in the act. The petitioner has annexed with the petition the

transcript copy, alleged to be true copy, of the said tape recorded speeches as schedules, 20, 22, 24 and 26. A perusal of those schedules go to indicate that the same cannot at all be said to be a true and full tape recorded speech of those persons. These schedules clearly show that spaces have been left at several places for filling-up the gap. It cannot, therefore, be said that the said schedules contained the full contents of the speeches alleged to have been delivered and tape recorded by those persons. The tape recorded speeches which have been relied upon by the petitioner are the integral part of the petition and therefore, the petitioner should have supplied the entire tape recorded cassette or at least full transcript of the so called tape recorded speech. It cannot be said that the tape recorded speech would merely be an evidence and not the integral part of the petition. This point was considered by the Hon'ble Supreme Court in AIR 1990 SC page 921 U. G. Shashi Dharan v. K. Karuna Karan. In that case the election was challenged on various grounds including the speech alleged to have been given by persons which was tape recorded and was used in the constituency. The copy of the said cassette containing the tape recorded speech was not delivered to the respondent along with the copy of the petition. The Hon'ble Supreme Court has in that connection observed :

“We have already referred to section 83 relating to the contents of an election petition. The election petition shall contain a concise statement of material facts and also set forth full particulars of any corrupt practice. The material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of Section 81(3) and, as such, the court has to dismiss the election petition under section 86(1) for non-compliance with section 81(3). On the other hand, if the contents of the document in question are pleaded in the election petition. In such a case, a copy of the document need not be served on the respondent and that will not be non-compliance with the provision of section 81(3). The document may be relied upon as an evidence, in the pleadings. In other words,

when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition. There may be another situation when a copy of the document need not be served on the respondent along with the election petition. When a document has been filed in the proceedings, but is not referred to in the petition either directly or indirectly, a copy of such document need not be served on the respondent. What Section 81(3) enjoins is that a true copy of the election petition has to be served on the respondents including the elected candidate. When a document forms an integral part of an election petition containing material facts of particulars of corrupt practice, then a copy of the election petition without such a document is not complete and cannot be said to be a true copy of the election petition. Copy of such document must be served on the respondents."

The Hon'ble Supreme Court in paragraph 22 has given a clear finding that the VIDEO cassette was the integral part of the petition and, therefore, the petitioner must supply to the respondent a copy of the video cassette the copy of the petition supplied to the respondent not a true copy of the election petition within the meaning of section 81(3) of the Act. It would be relevant to quote the view taken by the Hon'ble Supreme Court as follows :

"It is clear from item No. 1 of the list of documents that it is the specific case of the appellant that the video cassette was prepared at the instance of the first respondent for election propaganda, as stated in paragraph 5(xi) of the election petition. Whether it was so stated in item No. 1 of the List of Documents or not it is, as stated already, apparent on the face of the allegations in paragraph 5(xi) that it was used by the first respondent by way of assistance in furtherance of the prospectus of his election and so the video cassette formed an integral part of paragraph 5(xi). Unless a copy of the video cassette was given to the first respondent, he would not know how the speeches of the said Government servants could assist the furtherance of the prospects of his election and would not be in a position to deal with the allegations made in paragraph 5(xi). The copy of the election petition which was served on the first respondent without a copy of the video cassette was not, therefore, a true copy of the election petition within the meaning of section 81(3) of the Act."

The learned counsel for the petitioner has placed reliance on the case reported in AIR 1979 S.C. page

234 K.M. Mani v. P.J., Antony and contended that supply of the gist of the speech would meet the requirement of the provisions of law. The facts of that case were quite different. In that case there was no allegation that the speech was tape recorded. It was simply mentioned that Joseph Thomas had addressed the meeting exhorting to work for the victory of the respondent. It was in that context that the Hon'ble Supreme Court has observed that it was reasonable to expect that a transcript of the speech or at least its substance should be supplied to the respondent. In the present case there is a clear allegation that the speeches of those persons were tape recorded. It was, therefore, necessary that the copy of the cassette of the tape recorded speech or at least the transcript of the full and complete speech should be delivered to the respondent.

The plea that the aforesaid schedules did not contain the complete and true speeches alleged to have been given by those persons have been taken by the respondent in the written statement dated 13th May, 1992. The fact that the said objection was not taken by the respondent in his application filed on the same very day under Order 7 Rule 11 CPC would not, in my opinion have any effect, the said plea taken in the written statement filed along with the application order 7 Rule 11 CPC should also be considered.

It is alleged that Sri Shanta Kumar had delivered speech on 21-5-91 and the said speech was tape recorded by one Amit Kumar worker of the petitioner and also by BJP worker. The said speech was heard by voters at several places of the constituency at the instance and in the presence of the respondent. It is further alleged that the said speech had prejudiced the voters against the petitioner and was calculated for the furtherance of the prospect of the election of the respondent. A vague allegation has been made tape recorded speech was heard by voters at several places. Date, time and place of pleading the said tape recorded speech have not been given. The allegation that the same was heard by voters at several places of the constituency would not be a sufficient recital of material facts. Further in the petition it was also not alleged that Sri Shanta Kumar had delivered the speech on 21-5-91 with the consent of the respondent on his election agent.

Similarly the averments made about the speech alleged to have been given by Sri Ashok Singhal on 21-5-1991 do not disclose material facts regarding the corrupt practice. It was alleged that the said speech was delivered at Gulab Bari. Location of Gulab Bari has not been disclosed and it has been left for the respondent and the court to conjecture that the said Gulab Bari situates in a particular town, city or district. Allegation regarding consent of respondent is also vague.

It has also been alleged that Sri Atal Behari Bajpai had in the presence of the respondent delivered the speech on 12-5-1991 in Kshatraya Boarding House and the said speech would amount to corrupt practice as the appeal was made to vote for the respondent as BJP and Vishwa Hindu Parishad would

construct Sri Ram Mandir at Ram Janam Bhumi and the Babri Masjid would be shifted to some other place. In this regard also it may be mentioned that location of the said Kshatraya Boarding House where it is alleged that Sri Atal Behari Bajpai had delivered speech, has not been given. The petitioner has left the matter to be conjectured by the Court and the respondent. This submission is an important one and would indicate that material facts for this alleged corrupt practice have not been disclosed. Schedule 24 is alleged to be the tape recorded speech of Sri Atal Behari Bajpai. In this regard averments have been made in paragraph 19(c) of the petition as follows :

"The tape recorded speech of Sri Atal Bihari Bajpai is annexed herewith as schedule No. 24 to this petition and the details of the voters who heard and influenced by the speech of 12.5.1991 and cast their votes in favour of respondent No. 1 is being annexed herewith as schedule No. 25 to this petition."

No averment has been made as to who played the tape recorded speech, whether it was with the consent of the respondent or his election agent. It has also not been mentioned as to when and where the said tape recorded speech was displayed. There is, therefore, omission on material facts in this regard.

The allegations regarding the tape recorded speech of Sadhvi Ritumbhara have been made in paragraph 190 of the petition which reads as follows :

"(D) That the tape recorded speech of Sadhvi Ritumbhara was played by the agents of respondent No. 1 at different places in the constituency in favour of the respondent No. 1 with the intention to create intention in the mind of the voters for casting their vote in favour of the respondent No. 1 and also created communal hatred between Hindus and Muslims, so that the Hindus voters may cast their votes in favour of the respondent No. 1. A copy of speech of Sadhvi Ritumbhara is being annexed herewith as annexure 26 to this petition. The details of voters who were influenced and cast their votes in favour of the respondent No. 1 after hearing the said speech is being annexed as Schedule No. 2 to this petition."

A perusal of the aforesaid averment would go to show that no material facts in this regard have been disclosed. It has not been mentioned as to when and where the said alleged tape recorded speech of Sadhvi Ritumbhara was played. It was simply mentioned that the agent of respondent No. 1 had played the said speech at different places of the constituency. There is no allegation that the said taped speech was played by the said agent with the consent of the respondent or his election agent. Playing of the tape recorded speech without the consent of the respondent would not at all amount to corrupt practice. On the contrary if such tape recorded speech, if it is offending, has been played by the agent of the respondent with his

consent or with the consent of his election agent that would be a corrupt practice but no such allegation has been made in this regard in the petition.

In view of the above discussion, therefore, I am of opinion that no cause of action whatsoever regarding allegations made in paragraph 19 of the petition also have been disclosed.

The learned counsel for the petitioner has placed reliance on Man Phool Singh's case (supra). I do not think how this case would support the petitioner's case as the Hon'ble Supreme Court has observed:

"As regards issue (6) which relates to a corrupt practice, naturally particulars should have to be given as required under clause (1) (b) of Section 83. In order to see whether the requirements of S.83(1)(b) of giving full particulars of corrupt practices alleged by the respondent, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices, and the date and place of the commission of each such practice, have been met it is necessary to set out paragraphs 13 and 14 of the petition"

The aforesaid observation of the Supreme Court is in fact consonance with the view taken by the Supreme Court in other cases referred in the preceding paragraphs.

The learned counsel for the petitioner has contended that the petition could not be dismissed on the ground that the material particulars necessary to be supplied in the election petition as enjoined in Sec. 83 of the Act inasmuch as Section 86 of the Act which provides for dismissal of the petition, does not say for summary disposal of the petition on that account. Azhar Husain's case (supra) is the complete answer to the said argument. Relying on earlier Supreme Court case reported in AIR 1972 SC 515 Hardwari Lal v. Kanwal Singh the Supreme Court in Azhar Husain's case has observed that failure to plead even a single material fact would amount to disobedience of the mandate of section 83 (1) (a) of the Act and, therefore, an election petition can be and must be dismissed under Section 86 of the Act as it suffers from such vice. There is therefore no force in the argument of the learned counsel for the petitioner.

It has also be argued on behalf of the petitioner that since the respondent has already filed written statement in the case therefore, the question of raising preliminary objection regarding non-compliance of the provisions contained in sections 81, 82 or 83 of the Act does not arise. The argument has no force. The application for rejecting the petition under Order 7 Rule 11 CPC was filed by the respondent at the earliest opportunity and on that very day he had also filed the written statement. It cannot, therefore, be said that the respondent had at any stage waived his

right to raise preliminary objection regarding the non-compliance of sections 81, 82 or 83 of the Act. It may be noted that in the written statement also the respondent had taken the same very plea about the vagueness and non-disclosure of material facts and particulars regarding the allegation of corrupt practices. In any case the plea about the non-maintainability of the petition for the non-compliance of the mandatory provisions of the Act can be taken by the party at any time and at any stage of the proceeding.

In view of the above discussion, therefore, it is held that the petition does not contain a concise statement of material facts and the full particulars of the alleged corrupt practice mentioned in the peti-

tion and as such it does not comply with the provisions of section 83 of the Act. The petition does not disclose any cause of action on the basis of which the petitioner can claim the relief prayed for and paragraphs 9 to 19 regarding the alleged corrupt practice on the basis of which the election is sought to be set aside are struck off.

Application No. CMA No. 51 (E)/92 and CMA No. 63(3)/92 for striking out paragraphs 9 to 19 of the petition and for rejecting the petition under Order 7 Rule 11 CPC are allowed. The petition is, therefore, dismissed accordingly. The respondent No. 1 shall be entitled to get from the petitioner costs which is assessed at rupees one thousand.

Sd/- Radhey Krishan Agarwal